

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

DANNY E. IRBY

**PLAINTIFF**

VS.

**CIVIL ACTION NO. 4:03-cv-141 WHB-JCS**

DR. F. COLE; MAJOR BART GRIMES,  
CAPT. MARK ENTERKIN; OFFICER PATRICK THOMAS  
OFFICER JIMMIE MASON, and  
OFFICER JOSEPH FAIRCHILD

**DEFENDANTS**

**OPINION AND ORDER**

This cause is before the Court on Plaintiff Danny E. Irby's "Appeal to District Court," which has been construed as an Objection to the Report and Recommendation of United States Magistrate Judge ("Objection"). The Court has considered the Objection and all other relevant pleadings, and finds that the Objection should be denied.

This case, which is brought pursuant to 42 U.S.C. § 1983, arises out of the alleged misdiagnosis and improper medical treatment received by Plaintiff during the course of his incarceration at the East Mississippi Correctional Facility in Meridian, Mississippi. The case was referred to the magistrate judge who held omnibus hearings on April 29, 2004, and March 28, 2006. After his review of the evidence, Magistrate Judge James C. Sumner, found that although the prison officials failed to provide

Plaintiff adequate pain medication, failed to diagnosis his underlying condition, and prescribed improper treatment, that these acts of negligence did not constitute a valid Section 1983 claim. Judge Sumner also found that the actions of the defendants did not exhibit "deliberate indifference" to Plaintiff's illness because he was treated on a regular basis and there was no showing that he was harmed, other than his complaints of continued leg pain and swelling, based on the delay between the onset of his symptoms and his ultimate diagnosis. Judge Sumner ultimately found that although Plaintiff was misdiagnosed and the care he received was inappropriate in light of the diagnosis that was later made, these actions did not violate the Eighth Amendment to the United States Constitution. Accordingly, on August 9, 2006, Judge Sumner entered a Report and Recommendation by which he recommended that the Motion of the defendants for Summary Judgement be granted. Through the subject Objection, Plaintiff argues that the conclusions reached by Judge Sumner were erroneous.

Under Federal Rule of Civil Procedure 72(a), a district judge has the authority to review a magistrate judge's order. Upon the filing of an objection to the magistrate judge's order, the district judge must review the order *de novo*. Koetting v. Thompson, 995 F.2d 37, 40 (5th Cir. 1993) (citation omitted); 28 U.S.C. § 636(b). If the contents of the order are found to be

clearly erroneous or contrary to the law, the order may be modified or set aside. FED. R. CIV. P. 72(a).

After reviewing the Report and Recommendation, the Objection and attachments thereto, and supporting and opposing authority, the Court finds that the conclusions reached by Judge Sumner were neither clearly erroneous nor contrary to law. While Plaintiff had complaints of pain and swelling in his lower extremities, the record shows that he did receive continued treatment for these symptoms, albeit unsuccessful, during his incarceration. The record also shows that none of the defendants acted with deliberate indifference to Plaintiff's condition. There is no evidence that the defendants intended to inflict pain of any kind on Plaintiff, that they were actually aware of his lack of lymph glands (which is an exceedingly rare diagnosis), or that they knew the treatment they were providing was inappropriate or could otherwise aggravate his condition. While the Court, like Judge Sumner, finds that the record suggests negligence on the part of the defendants, the negligence shown does not constitute a valid claim under 42 U.S.C. § 1983. Accordingly, the Court finds that the Report and Recommendation of Judge Sumner should be adopted over Plaintiff's Objection and that the Motion of the defendants for Summary Judgment should be granted.

IT IS THEREFORE ORDERED that Plaintiff's Objection to Report and Recommendation [Docket No. 108] is hereby denied.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge [Docket No. 106] is hereby adopted.

IT IS FURTHER ORDERED that the Motion of Defendants for Summary Judgment [Docket No. 95] is hereby granted. A Final Judgment will be entered that dismisses this case with prejudice.

SO ORDERED this the 25th day of September 2006.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE